



Atty. Dkt. No. 033730-0102

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Henricus Petrus Joseph TE RIELE, et al.

Title: HOMOLOGOUS RECOMBINATION IN  
MISMATCH REPAIR INACTIVATED  
EUKARYOTIC CELLS

Patent No.: 7,199,280

Issued: April 3, 2007

Appl. No.: 09/884,877

Filing Date: June 20, 2001

Examiner: J. Woitach

Art Unit: 1632

**REQUEST FOR RECONSIDERATION OF**  
**DECISION ON PATENT TERM ADJUSTMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent.

With the Decision mailed on May 10, 2010, the Patent Office determined that the patent was entitled to 0 days of PTA. The present Request for Reconsideration is timely filed within one (1) month or thirty (30) days, whichever is longer, from the decision.

Applicants have calculated PTA for the captioned patent, and have determined that the patent is entitled to 139 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	638 days
(b) Total Applicant delay:	499 days
Final PTA Determination:	139 days

Applicants believe the 209 day reduction between the filing of a Notice of Appeal on June 23, 2005 and an RCE on January 18, 2006 under 35 U.S.C. 154(b)(1)(B)(i) is not proper. 35 USC 154(b)(1)(B)(i) provides that the guarantee of no more than 3-year pendency does not include “any time consumed by continued examination of the application.” 37 C.F.R. 1.702(b)(1) contains parallel language. 37 C.F.R. 1.703(b)(1) implements these provisions by counting the number of days “beginning on the date on which a **request for continued examination** . . . was filed and ending on the date the patent was issued.” (emphasis added) 37 C.F.R. 1.703(b)(1) is clear in stating that the “type-B” delay does not include time from the RCE date to the issue date. Thus, Applicants believe that the Office’s PTA calculation using the **notice of appeal date** to the issue date is in clear error. Therefore, Applicants respectfully request adjustment of the “B-type” delay to 576 (367 + 209) days.

Additionally, Applicants believe there is a 42 day “A-type” delay. Specifically, under 35 U.S.C. §154(b)(1)(A)(i), the Office was required to “provide at least one of the notifications...not later than 14 months after- the date on which an application was filed.” However, the Office did not provide a restriction requirement until October 1, 2002, which was 42 days after the 14 month filing date of June 20, 2001.

Finally, Applicants believe there is a 20 day “A-type” delay. Specifically, under 35 U.S.C. §154(b)(1)(A)(iv), the Office was required to “issue a patent within 4 months after the date on which the issue fee was paid.” However, the Office did not issue the patent until April 3, 2007, which was 20 days after the 4 month anniversary that the issue fee was paid (issue fee was paid on November 14, 2006).

Applicants therefore respectfully request that the patent be accorded 139 days PTA.

The patent is not subject to a terminal disclaimer.

It is believed no fees are due for the present filing. Any deficiency in fees may be charged to Deposit Account 19-0741.

Respectfully submitted,

Date June 1, 2010

By 

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## Patent Term Adjustment Calculation System

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Docket Number: 033730-0102  
 Application Number: 09/884877  
 Patent Number: 7199280



	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	06/20/2001	0		
Edit Delete	Notice to File Missing Parts	07/24/2001	34		
	Notice to File Missing Parts + 3 months	10/24/2001	126		
Edit Delete	Response to Notice to File Missing Parts	12/26/2001	189		63
Edit Delete	Notice to File Missing Parts	01/14/2002	208		
	Notice to File Missing Parts + 3 months	04/14/2002	298		
Edit Delete	Response to Notice to File Missing Parts	04/15/2002	299		1
	14 month From Application date	08/20/2002	426		
Edit Delete	Restriction Requirement	10/01/2002	468	42	
Edit Delete	Restriction Requirement Response Received at PTO	10/31/2002	498		
Edit Delete	Non-Final Office Action	02/04/2003	594		
	Non-Final Office Action + 3 months	05/04/2003	683		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/04/2003	775		
Edit Delete	Notice of Non-Compliance	08/13/2003	784		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	09/08/2003	810		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	10/07/2003	839		
Edit Delete	Notice of Non-Compliance	01/02/2004	926		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	01/12/2004	936		(253),(161), (126),(97) 253
Edit Delete	Non-Final Office Action	04/16/2004	1,031		
	3 Year Period Starts	06/20/2004	1,096		
	Non-Final Office Action + 3 months	07/16/2004	1,122		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	10/14/2004	1,212		90
Edit Delete	Final Office Action	12/23/2004	1,282		
	Final Office Action + 3 months	03/23/2005	1,372		
Edit Delete	Final Office Action Response Received at PTO	04/22/2005	1,402		
Edit Delete	Advisory Action	05/23/2005	1,433		

Edit	Delete	Final Office Action Response Received at PTO	05/27/2005	1,437		
Edit	Delete	Advisory Action	06/23/2005	1,464		
Edit	Delete	Notice of Appeal Received at PTO	06/23/2005	1,464		92
		3 Year Period Stopped	01/17/2006	1,672	576	
Edit	Delete	Request For Continued Examination (including amendment)	01/18/2006	1,673		
Edit	Delete	Ex parte Quayle Action	04/10/2006	1,755		
Edit	Delete	Ex parte Quayle Action Response Received at PTO	05/08/2006	1,783		
Edit	Delete	Notice of Allowance	09/08/2006	1,906		
Edit	Delete	Issue Fee Paid	11/14/2006	1,973		
		Issue Fee Paid + 4 months	03/14/2007	2,093		
Edit	Delete	Patent Grant Date	04/03/2007	2,113	20	
				Totals:	638	499
				PTA:		139

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Version: 3.02.05

LOGIN: Karen Walker

IP: 10.14.41.156

Foley &amp; Lardner LLP